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FILED
U.S. DISTRICT COURT

2005 JUL -5 P 3:33

DISTRICT OF UTAH
BY: *[Signature]*
DEPUTY CLERK

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Attorneys for Plaintiff Aquila, Inc.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION**

AQUILA, INC.,

Plaintiff,

v.

C.W. MINING,
d/b/a CoOp Mining Company,

Defendant.

COMPLAINT

Judge Tena Campbell
DECK TYPE: Civil
DATE STAMP: 07/05/2005 @ 15:31:47
CASE NUMBER: 2:05CV00555 TC

Aquila, Inc. ("Aquila"), by and through its undersigned attorneys, files this Complaint against C.W. Mining, d/b/a CoOp Mining Company ("C.W. Mining") and alleges as follows:

PARTIES

1. Aquila is a Delaware corporation having its principal place of business in Missouri.
2. C.W. Mining is a Utah corporation having its principal place of business in Utah.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because Aquila and C.W. Mining are incorporated in and have principal places of business in different states. Further, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

4. The Court has personal jurisdiction over C.W. Mining.
5. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a).

BACKGROUND FACTS

6. On or about September 10, 2003, Aquila and C.W. Mining entered into an agreement for the purchase by Aquila of coal produced by C.W. Mining (the “Agreement”).

7. The Agreement has an initial term of three years, running from January 1, 2004, through December 31, 2006 (the “Primary Term”). The Agreement grants Aquila an option to extend the term of the Agreement for an additional two years, from January 1, 2007, through December 31, 2008 (the “Extension Term”). The option to extend the term has been exercised by Aquila.

8. Under the Agreement, C.W. Mining is to supply Aquila with certain stated quantities of coal with certain stated characteristics.

9. The price to be paid by Aquila for these amounts of coal is set forth in the Agreement.

10. C.W. Mining has breached the terms of the Agreement by failing and refusing to supply coal in the quantity and of the quality required by the Agreement.

11. By letter dated April 18, 2005, C.W. Mining informed Aquila that it was purportedly terminating the Agreement.

12. By letter dated April 25, 2005, Aquila demanded that C.W. Mining resume delivery of coal in the quantities provided in the Agreement and that C.W. Mining withdraw its purported notice of termination.

13. Despite Aquila's demand, C.W. Mining has failed and continues to fail to comply with the terms of the Agreement. Aquila hereby cancels the Agreement.

14. Since executing the Agreement in September 2003, the market price of coal has increased significantly over the price negotiated and incorporated into the Agreement.

CAUSE OF ACTION--BREACH OF CONTRACT

15. Aquila incorporates paragraphs 1 through 14 as if fully set forth herein.

16. Aquila and C.W. Mining entered into the Agreement under which C.W. Mining promised to supply certain quantities of coal to Aquila in exchange for payment by Aquila of an agreed price.

17. C.W. Mining has breached the terms of the Agreement by, among other things, failing and refusing to supply coal in compliance with the Agreement and by improperly repudiating the Agreement on April 18, 2005.

18. Aquila has duly and properly performed all of its obligations under the Agreement.

19. C.W. Mining's improper actions have caused and will cause Aquila damages, including but not limited to: (1) the difference between the negotiated price of coal in the Agreement and the cost of cover goods purchased by Aquila over the duration of the contract

(including the Extension Term) and all incidental or consequential damages incurred by Aquila related thereto, (2) damages for C.W. Mining's non-delivery of coal under the Agreement, and (3) other damages, all in an amount estimated to be in excess of \$75,000.

WHEREFORE, Aquila prays for judgment in its favor and against C.W. Mining on its complaint for all damages suffered and incurred by Aquila and for its attorneys' fees and costs incurred in this action, and for such other and further relief as the Court deems just and proper.

DATED this 5th day of July, 2005.

RAY QUINNEY & NEBEKER P.C.

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10700 East 350 Highway
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829324

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Aquila, Inc.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Jackson County, MO</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) See attachment.</p>		<p>DEFENDANTS</p> <p>U.S. DISTRICT COURT</p> <p>C.W. Mining d/b/a CoOp Mining Company</p> <p>2005 JUL - Salt Lake County, UT</p> <p>County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, STATE THE LOCATION OF THE LAND INVOLVED.</p> <p>BY: <u>DEPUTY CLERK</u></p>																			
<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> 1 U.S. Government Plaintiff </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) </td> </tr> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> 2 U.S. Government Defendant </td> <td style="width: 50%; vertical-align: top;"> <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) </td> </tr> </table> <p>III. 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V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judge

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332
	Brief description of cause: Breach of contract/recovery of damages

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS \$ \$75,000.00 Excess of CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions.)

IF ANY (See instructions). **JUDGE** _____ **DOCKET NUMBER** _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

July 5, 2005

5-1 5,
FOR OFFICE USE ONLY

TORNEY OF RECORD

APPLYING IEP

Judge Tena Campbell
DECK TYPE: Civil

DATE STAMP: 07/05/2005 @ 15:31:47
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Attorneys for Plaintiff Aquila, Inc.

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